

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY )  
SPENCER and KATHRYN E. TETZ, )  
 )  
Plaintiffs, )

vs. )

No. 11-cv-05424-BHS

)  
FORMER DEPUTY PROSECUTING )  
ATTORNEY FOR CLARK COUNTY JAMES )  
M. PETERS, DETECTIVE SHARON )  
KRAUSE and SERGEANT MICHAEL )  
DAVIDSON, )  
 )  
Defendants. )

VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION  
OF

ARTHUR DAVID CURTIS

DATE TAKEN: December 10, 2012  
TIME: 9:00 a.m.  
PLACE: 613 W. 11th Street  
Vancouver, Washington

COURT REPORTER: Teresa L. Rider, CRR, RPR, CCR

EXHIBIT C

Rider & Associates, Inc.

360.693.4111

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1                   ARTHUR DAVID CURTIS,  
2   called as a witness in behalf of the Plaintiffs, having  
3   been duly sworn, was examined and testified as follows:

4                   (Deposition Exhibits No. 1 through 25 were  
5   marked for identification.)

6  
7                   EXAMINATION

8   BY MS. ZELLNER:

9           Q.   Could you state your full name for the record,  
10   including your middle name.

11          A.   Arthur David Curtis.

12          Q.   And Curtis is spelled with a C?

13          A.   Yes.

14          Q.   Just a couple of rules. Let's try to not talk  
15   over each other. There's a little bit of problem, just  
16   with the technology of a lag time, so let me complete my  
17   question before you answer, and I'll try to do the same  
18   so you can fully answer the question.

19                If you need a break, let us know. And if you  
20   answer a question, I will assume that you understood the  
21   question. If you don't, just tell me and I can rephrase  
22   it.

23                Are those rules clear?

24          A.   Yes.

25          Q.   What is your current occupation?

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1 A. I'm retired.

2 Q. And how long have you been retired?

3 A. Almost two years.

4 Q. Where did you attend law school and what year  
5 did you graduate?

6 A. I attended law school at Northwestern School of  
7 Law at Lewis & Clark College in Portland, Oregon. I  
8 graduated in 1974.

9 Q. And then when did you become licensed to  
10 practice law in Washington?

11 A. In 1975.

12 Q. And when were you first elected as the Clark  
13 County prosecutor?

14 A. I was elected in 1981.

15 Q. How many terms did you serve?

16 A. Well, I was appointed -- actually, I was  
17 appointed and then I ran in a special election in 1981.  
18 And then I ran every four years thereafter starting in  
19 1982.

20 Q. Is it correct, did you serve, then, eight terms  
21 in total?

22 A. '82, '86, '90, '94, '98, 2002 -- seven full  
23 terms, plus the partial term.

24 Q. And what year were you appointed?

25 A. I was appointed in 1981.

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1 Q. And at that point when you become aware of his  
2 arrest, are you provided with Shirley Spencer's  
3 handwritten letter describing her interaction with Katie  
4 Spencer in August of 1984?

5 A. Well, we were provided with police reports and  
6 other documents that would have pertained to the  
7 investigation, but I can't tell you specifically whether  
8 that document was one of the items reviewed.

9 Q. Was it your understanding that the initial,  
10 I'll call it, outcry by Katie Spencer was made to her  
11 stepmother?

12 A. I don't recall.

13 Q. Do you recall reviewing the documents yourself  
14 or did you simply make the assignment of the case to one  
15 of your deputy prosecutors?

16 A. I don't recall that either.

17 Q. Do you assign the case fairly soon after the  
18 arrest?

19 A. Yes.

20 Q. Who do you assign it to?

21 A. Well, I believe that case was assigned to Mr.  
22 Peters.

23 Q. If you could explain to me or describe for me  
24 what was the probable cause for the arrest of Mr.  
25 Spencer the first time, the January 3rd arrest.

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1 A. Well, generally, as I recall, it was based upon  
2 the allegations being made by Katie regarding sexual  
3 activity that she was involved with with Mr. Spencer.

4 Q. Was there, other than Katie Spencer's  
5 allegations, was there any other basis for the probable  
6 cause to arrest that you're aware of?

7 A. Well, whatever would have been included in the  
8 police reports. I believe there was an interview that  
9 she had with Sharon Krause and I know that there was a  
10 written statement that Shirley Spencer had written out,  
11 several pages long, that I reviewed, and I don't know if  
12 that was part of the original file or not. I would  
13 assume it would have been, but I can't say for sure.

14 Q. Under Washington law at the time, is it correct  
15 that Shirley Spencer would not have been able to testify  
16 to the substance of those allegations but only to the  
17 fact that sexual abuse had been reported to her?

18 A. As I recall 9844 had gone into effect, the  
19 Child Hearsay Statute in the state of Washington, before  
20 that incident occurred. That's my recollection.

21 Q. So in your opinion, would the Shirley Spencer  
22 letter describing the allegations, would that have been  
23 part of the probable cause for the arrest?

24 A. If it was incorporated in the police report,  
25 sure.

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1 A. Had I ever talked to Sharon Krause about sexual  
2 abuse cases?

3 Q. Yes. Not this case but just in general, had  
4 you ever had conversations or meetings with Sharon  
5 Krause prior to an arrest about a pending investigation  
6 of a child sexual abuse case?

7 A. Oh, sure, I've talked to Sharon Krause all the  
8 time. She was the go-to person for sex crimes -- child  
9 sex crimes in the sheriff's office at that time.

10 Q. And was it a common practice of yours or your  
11 deputy prosecutors to have contact with an investigator,  
12 like Sharon Krause, prior to the arrest of the sex abuse  
13 case?

14 A. Not necessarily prior to the arrest, because  
15 there was a lot of pending investigations that she may  
16 have been working on that she wouldn't discuss with us  
17 until she got to a probable cause situation.

18 Q. And do you recall with the Katie Spencer  
19 allegations prior to January 3rd, 1985, speaking to any  
20 of the investigators on the case? You said no about  
21 Sharon Krause, you don't remember, but anyone else that  
22 was investigating?

23 A. No, I don't recall.

24 Q. In terms of the involvement of you or your  
25 deputy prosecutors in the investigation of sex abuse

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1 cases, did you become involved in the investigation of  
2 those cases prior to the arrest?

3 A. No.

4 Q. And that would be true of sex abuse cases or  
5 any other type of investigation, correct?

6 A. Pretty much, right.

7 Q. Did you ever advise investigators about  
8 probable cause to arrest? Did they ever seek your  
9 counsel about whether they had enough to make the  
10 arrest?

11 A. Occasionally.

12 Q. Do you remember if they did that on the Ray  
13 Spencer case prior to the first arrest?

14 A. No, I don't recall.

15 Q. You said that the initial assignment was made  
16 to Jim Peters; is that right?

17 A. That's my recollection.

18 Q. And do you know whether Jim Peters at the time  
19 you made your assignment to him of the case after the  
20 arrest, do you know if he'd had any contact with Sharon  
21 Krause prior to the arrest about the investigation?

22 A. I don't recall.

23 Q. Do you know if any background investigation was  
24 ever done of Shirley Spencer?

25 A. No, I don't.

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1 A. Yes.

2 Q. Did Mr. Peters - and we're just talking about  
3 the first arrest - did Mr. Peters ever report to you  
4 that he did not think that the case should be charged?

5 A. Not that I recall.

6 Q. Did you rely on Mr. Peters' evaluation of the  
7 sufficiency of the evidence to charge the case?

8 A. Yes.

9 Q. And I'm assuming that you didn't conduct an  
10 independent evaluation of the legal sufficiency of the  
11 evidence yourself, did you?

12 A. Well, I discussed the -- yes, I did. I  
13 discussed the -- what Mr. Peters had determined in his  
14 interview that he conducted with Katie prior to filing  
15 the charge.

16 Q. And is that -- which interview are you  
17 referring to?

18 A. I don't know what interview it was. But as I  
19 recall, he interviewed the girl and we filed the charge  
20 -- I filed the charge.

21 Q. Right. Are you referring to the videotaped  
22 interview that was done December 11th, 1984?

23 A. I don't know if it was the videotaped interview  
24 or whether it was a separate interview. I just know  
25 that he had interviewed her.



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1 Q. And tell me, if you can, what did Mr. Peters  
2 tell you about his interview of Katie Spencer that  
3 convinced you that charges should be filed.

4 A. Well, as I recall, he told me that he had  
5 interviewed her about the allegations, that she appeared  
6 to him to be competent, that she would stand up under  
7 scrutiny on the witness stand. He thought he could use  
8 her as a witness, and that she was believable in her  
9 allegations against Mr. Spencer.

10 Q. So he told you that she was competent and she  
11 was also credible. Would that be a fair statement?

12 A. Yes. In his opinion, yes.

13 Q. And is it also a fair statement that you relied  
14 exclusively upon that opinion to file the charges?

15 MS. FETTERLY: Object as to form.

16 BY MS. ZELLNER:

17 Q. You can answer.

18 A. I can't say exclusively because I probably  
19 conversed with Sharon Krause, as well.

20 Q. So assuming that you talked to Sharon Krause  
21 also about the allegations, would it be a fair statement  
22 to say that based upon what Sharon Krause told you and  
23 what Jim Peters told you that you decided then to file  
24 the charges?

25 A. I probably would have read the police reports,

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1 as well. So it would have been a combination of those  
2 three factors: of my personal review of the police  
3 reports and the allegations contained therein, my  
4 conversation with Sharon Krause as to her assessment of  
5 the victim and Jim Peters' input as to his assessment,  
6 as well. It was probably a combination of those three  
7 things.

8 Q. Of those three things, did any of those three  
9 things have more weight than the others with you in  
10 making that decision?

11 A. No, because it was all pretty -- as I recall,  
12 it was all pretty consistent. Everybody was basically  
13 concluding the same thing.

14 Q. Do you know if prior to making the charging  
15 decision, other than the police reports, did you ever  
16 look at or review a videotape that was made December  
17 11th, 1984, of Jim Peters' interview with Katie Spencer?

18 A. I don't believe that I reviewed that tape, no.

19 Q. Do you know if prior to filing the charges on  
20 January 3rd, had you been informed that there was a  
21 videotape?

22 A. Not that I recall.

23 Q. And would you expect one of your deputy  
24 prosecutors, if they had videotaped the interview with  
25 the child, a child witness in a sex abuse case, to have

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1 informed you of that?

2 A. Not necessarily, but I can't say it -- that's  
3 all I can say. Not necessarily.

4 Q. If you had been informed that there was a  
5 videotape of the child, would you have wanted to have  
6 reviewed the videotape before making the charging  
7 decision?

8 A. I may have.

9 Q. We'll come back to the videotape. But were you  
10 at some time made aware that a videotape of Katie  
11 Spencer had been made?

12 A. Yes.

13 Q. Do you remember when you learned that there was  
14 a videotape that had been made?

15 A. Well, from what I can recall, I don't remember  
16 anything about a videotape until fairly -- well, fairly  
17 recently in the scheme of the time of this case. It was  
18 after he was released from prison and the post-release  
19 issues were occurring.

20 Q. And just for point of reference, that was in  
21 2009. After you learned that there had been a videotape  
22 made, have you ever reviewed that videotape up until  
23 today?

24 A. Yes. My recollection is that that was the  
25 first that I knew of the videotape. And when I became

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1 aware of its existence, I wanted to review it  
2 personally, which I did.

3 Q. And you probably reviewed it in 2009 or '10,  
4 somewhere in that time frame?

5 A. Thereabouts, right.

6 Q. When you reviewed the videotape, had you been  
7 provided with an official court transcript or court  
8 reporter transcript of the video?

9 A. I don't believe so. I believe I just reviewed  
10 it in the office next to my office on a TV. I plugged  
11 the video in and I just looked at it. I don't recall a  
12 transcript being attached to it.

13 Q. So if we go back to -- and we'll come back to  
14 the videotape -- but if we go back to the January  
15 charging decision, would you characterize from that  
16 point forward your involvement in the Spencer case as  
17 actively involved, were you actively involved in the  
18 case?

19 A. The case was assigned to Mr. Peters, and I  
20 would say I was active in an oversight capacity.  
21 Because he was a Vancouver police officer, it was deemed  
22 to be a quote, unquote, high profile case, and part of  
23 my office guidelines was to keep me informed. Part of  
24 my office guideline was to keep me informed on all high  
25 profile cases.

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1 Q. And at a certain point in time prior to the  
2 charging decision being made in January, you had  
3 actually had the case sent to a King County prosecutor  
4 named Rebecca Roe; is that right?

5 A. That's correct.

6 Q. So that was done November 27th of 1984. And I  
7 think I'll -- we've marked and sent Rebecca Roe's  
8 report, I'll refer to that as Plaintiffs' Exhibit 1,  
9 and I'll give you a minute to find that document.

10 A. I have it right here. Thank you.

11 Q. Okay. Tell me, what were the decisions that  
12 you made leading up to sending it out to Rebecca Roe or  
13 why did you send it to Rebecca Roe.

14 A. She was known in the state of Washington as an  
15 expert in the field of child sex abuse cases and we  
16 wanted her opinion as to whether she felt that it was  
17 legally sufficient to charge.

18 Q. Up until that point in time, Rebecca Roe had  
19 not only prosecuted a lot of sex abuse cases, but she'd  
20 also written articles about the prosecution of sex abuse  
21 cases; is that right?

22 A. Probably. I don't know specifically what her  
23 background was. I know she was well respected.

24 Q. And just explain a little bit more, I think you  
25 talked about it was a high profile case, a sensitive

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1 case. What was the exact reason that you decided to  
2 send it to her? You said her expertise. Was there  
3 another reason that you sent it out?

4 A. Well, I believe at the time Mr. Spencer was  
5 still a member of the Vancouver Police Department and I  
6 felt that because we had a close working relationship  
7 with that department that an appearance of fairness  
8 issue arose and it would be good to ask someone outside  
9 of our office to review the case.

10 Q. Had you ever sent another sex abuse case to  
11 Rebecca Roe?

12 A. I don't recall.

13 Q. If we could just go through her report, the  
14 Bates stamp is 227. I'm on the first page of the  
15 report.

16 In her numbered paragraphs, would you read that  
17 one of the concerns that Rebecca Roe identifies is that  
18 the child, Katie Spencer, appears to be reluctant to  
19 talk about the allegations.

20 A. That's what it says, yes.

21 Q. Okay. And, in fact, Ms. Roe notes that:  
22 Sharon Krause had to spend several hours one-on-one with  
23 the victim, who also indicated that she would not talk  
24 about it with boys, is that correct, that's what the  
25 report said?

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1 Q. Because even in those first couple of  
2 paragraphs, Rebecca Roe seems to be expressing the  
3 opinion that the case may have reasonable doubt built  
4 into it, wouldn't you say?

5 A. That's her opinion, yes.

6 Q. Would it be a fair statement to say, though,  
7 that her opinion, if provided to you, would have been  
8 something you would have taken into consideration in  
9 making your charging decision?

10 A. Yes.

11 Q. Then she goes on in paragraph 3 and she points  
12 out that there are inconsistencies, she says, not  
13 surprisingly in the child's statements over -- I believe  
14 it says overall issues. And then she gives a list. She  
15 said a number of times, many times versus one time.  
16 That inconsistency would have been something that you  
17 would have wanted to know about, right, in making the  
18 charging decision?

19 A. Yes.

20 Q. And then she also points out what the defendant  
21 was wearing, and she says defendant nude versus  
22 defendant wearing underwear versus defendant wearing a  
23 robe. That inconsistency would be important to know  
24 before making the charging decision, don't you think?

25 A. Yes.

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1 take a break at a convenient time?

2 MS. ZELLNER: Let's let him look at this  
3 document, we'll take a break and we'll come back and let  
4 him ask you about it.

5 MS. FETTERLY: Can I just clarify before we go  
6 off record that all counsel received documents I  
7 e-mailed late last week, about six or seven pages?

8 MR. FREIMUND: I did.

9 MS. ZELLNER: We did, too. We've got them. So  
10 we'll be back.

11 (Discussion off the record.)

12 BY MS. ZELLNER:

13 Q. So what I've labeled as Plaintiffs' Exhibit 3,  
14 is that the information that was filed by your office  
15 and signed by you on January 3rd, 1985?

16 A. Yes. January 2nd, I believe.

17 Q. Oh, I'm sorry. January 2nd, 1985.

18 And in your opinion when this document was  
19 filed, was it a legally sufficient charge that your  
20 office was making?

21 A. Yes.

22 Q. Do you recall whose idea was it to refer the  
23 case to Rebecca Roe? Was that an idea that you had come  
24 up with?

25 A. I don't recall.



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1 Q. At any time up until -- well, did anyone in  
2 your office as of January 2nd, 1985, express the opinion  
3 that the case should not be filed and that it was too  
4 weak to file it?

5 A. My recollection is that Mr. Peters had some  
6 reservations about it.

7 Q. And because he had those reservations, then was  
8 the decision made that he would interview Katie Spencer  
9 and then report back to you whether he thought the case  
10 was strong enough to file?

11 A. I don't know if his reservations were based  
12 upon the Becky Roe letter or the police reports or a  
13 combination thereof, but we definitely weren't going to  
14 make a filing decision until he had interviewed the  
15 child.

16 Q. Right. And then the child was interviewed, and  
17 your understanding was that those reservations had  
18 resolved and that you were filing a legally sufficient  
19 case; isn't that right?

20 MS. FETTERLY: Object as to form.

21 THE WITNESS: Mr. Peters came back to me after  
22 concluding the interview and gave me his opinions as to  
23 whether or not the case should be filed. I took it  
24 under advisement and made the ultimate decision to file.

25 BY MS. ZELLNER:

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1 Q. And after the interview when Mr. Peters advised  
2 you, he advised you, did he not, that the case was  
3 viable and it should be filed?

4 A. I think he expressed the reservations about the  
5 girl and whether or not she could withstand scrutiny,  
6 but I believe he concluded that she was, like I said  
7 earlier, she was competent, although barely, and would  
8 be able to testify truthfully as to what had occurred.

9 Q. You would agree that competency is really a  
10 different determination than credibility, would you not?

11 A. Correct.

12 Q. But Mr. Peters had informed you that he  
13 believed that she was competent, I think you said  
14 barely, and that I'm assuming that she also was credible  
15 in her allegations.

16 A. Yes. Competency is a threshold determination  
17 that has to be made by the judge prior to trial. He  
18 could have found her credible but not competent.

19 Q. Right. And typically in a competency  
20 evaluation, questions about the abuse itself are not  
21 even asked; isn't that right? The questions are about  
22 whether the child knows their birthday and where they  
23 live and their ABCs and things like that, wouldn't you  
24 agree?

25 A. Yes.

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1 A. Yes, it says Omnibus Application By Defendant  
2 and Court.

3 Q. Correct. Right. Do you recognize those  
4 initials?

5 A. Well, they appear to be Jim Peters' initials.

6 Q. And in this motion on the first page, the last  
7 number is No. 6 and it's checked off and it says: For  
8 discovery of the names and addresses of plaintiffs'  
9 witnesses and their statements, do you see that? And  
10 then the answer is JP will provide.

11 A. Right.

12 Q. Now, would you agree that Mr. Peters, in  
13 answering the omnibus, is indicating that he will  
14 provide the names and addresses of plaintiffs' witnesses  
15 and their statements, that all statements of the  
16 witnesses would have to be provided by your office to  
17 the defense, correct?

18 A. Yes.

19 Q. And, actually, under Washington law at the  
20 time, it required prosecutors to produce not only what  
21 was in their file but any documents that they had  
22 knowledge of; is that correct?

23 MR. FREIMUND: Object to the form.

24 You may answer, though.

25 THE WITNESS: Well, I'm sorry. Could you

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1 Q. Right. And, actually, you are aware that Brady  
2 disclosures have to be made regardless of whether  
3 there's a trial or not. Are you aware of that?

4 MR. FREIMUND: Object to the form.

5 You may answer.

6 THE WITNESS: Brady is a continuing obligation  
7 on the part of the prosecution, yes.

8 BY MS. ZELLNER:

9 Q. And do you have any knowledge as to whether or  
10 not your office ever produced the videotaped statement  
11 of Katie Spencer that was made on December 11th, 1984,  
12 to the defense prior to Mr. Spencer's guilty plea?

13 A. I don't have any personal knowledge of that.  
14 And I'd like to also clarify my prior answer where I  
15 said there usually was a continuing obligation on both  
16 sides to produce evidence. If you look at the last page  
17 of the omnibus application, it says: All information  
18 promised to be supplied in the future will be provided  
19 ten days before trial. That was the specific agreement  
20 in this case.

21 Q. Right. And this case was actually first set  
22 for trial on February 27th, 1985, correct, then it was  
23 continued? But the original trial date on the Spencer  
24 case was February 27th, 1985, right?

25 A. I don't recall.

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1 Q. Are you aware that the case was continued a  
2 couple of times?

3 A. I don't have specific recollection of that, no.  
4 It wouldn't surprise me because most of these cases got  
5 continued past the first trial date.

6 Q. Sure. So actually, the statement that you read  
7 that it was to be provided in advance of the trial, ten  
8 days before trial, that would apply to the trial date  
9 that was pending at the time that this motion was made,  
10 right?

11 MS. FETTERLY: Object as to form.

12 BY MS. ZELLNER:

13 Q. Whatever the trial date was, the disclosures  
14 had to be made ten days in advance; is that right?

15 A. That's the specific agreement here, correct.

16 Q. Right. So if the trial date was February 27th,  
17 1985, the disclosures had to be made by February 17th,  
18 1985, correct?

19 MS. FETTERLY: Object as to form.

20 THE WITNESS: Yes, unless the parties knew that  
21 there was going to be a continuance, which I don't know  
22 if that -- there's a lot of informal discussion that  
23 goes on between the attorneys on trial dates. Defense  
24 might have said I'm going to ask for a continuance and  
25 Mr. Peters might have said, fine, I won't oppose it,

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1 because that's pretty normal course of action.

2 BY MS. ZELLNER:

3 Q. But there's no question that all of Katie  
4 Spencer's statements had to be produced within ten days  
5 of the trial date; is that correct?

6 MS. FETTERLY: Object as to form. It says  
7 witnesses.

8 BY MS. ZELLNER:

9 Q. Isn't that what you just read to us?

10 A. No. It says ten days before trial, meaning the  
11 actual trial, not the trial date.

12 Q. You think that's the Brady disclosure  
13 requirement, regardless of what this document says?

14 MS. FETTERLY: Object as to form. You're  
15 talking about two different things, statement of  
16 witnesses or Brady information.

17 MS. ZELLNER: I'm just asking him his  
18 understanding of Brady.

19 BY MS. ZELLNER:

20 Q. If your disclosure requirements were limited to  
21 whether or not the case went to trial --

22 A. Brady is a continuing obligation.

23 Q. -- regardless --

24 A. In other words, you can't hold on to -- you  
25 don't hold off Brady information that you have in your

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1 possession and wait ten days before trial.

2 Q. Right. We're in agreement.

3 You would agree that the videotape which you  
4 found out about in apparently 2009 and was made December  
5 11th, 1984, had to be disclosed prior to the guilty plea  
6 of Ray Spencer.

7 MR. VELJACIC: Object to form.

8 THE WITNESS: There was a discussion that  
9 occurred after I became aware of that tape as to whether  
10 or not it was Brady evidence. And I made the decision  
11 to disclose it because I said something to the effect  
12 I'm not going to split that hair.

13 BY MS. ZELLNER:

14 Q. Tell me about when that decision was made. Was  
15 that made in 2009?

16 A. Yes.

17 Q. So you find out, I'm assuming for the first  
18 time, that the video has been discovered by Sharon  
19 Krause in her garage.

20 A. That was my understanding, yes.

21 Q. How are you informed of that information? Who  
22 informed you?

23 A. My recollection is that she sent the tape with  
24 a letter to my chief criminal deputy, Dennis Hunter - it  
25 might have been Mike Kinnie, but I thought it was Dennis

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1 Hunter - and then thereafter, Mr. Hunter informed me of  
2 the existence of the tape.

3 Q. Were you still the Clark County prosecutor at  
4 the time that the tape was discovered in 2009?

5 A. Yes.

6 Q. And I'm assuming that you reviewed, then, the  
7 tape, is that right, the video?

8 A. Yes.

9 Q. And then who did you instruct that it should be  
10 disclosed?

11 A. Mr. Hunter and/or Mr. Kinnie.

12 Q. And tell me just the thought process leading up  
13 to your decision to disclose it.

14 A. Well, when I reviewed the tape, I did not see  
15 it as being Brady evidence myself. But I also, in  
16 reviewing it, saw that the defense could take the  
17 position that it was Brady evidence. And that's why  
18 when we had the discussion about whether or not it  
19 needed to be disclosed, I said I'm not going to split  
20 that hair because I could see it from both sides.

21 Q. Right. And so then you ordered -- was it Mr.  
22 Hunter, to disclose the video?

23 A. That's my recollection.

24 Q. And that occurred, I think, sometime in 2009.

25 A. It would have been shortly after it was



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1 talk to, one of the national media shows, 20/20,  
2 whatever it was, to discuss the case, but I can't  
3 remember if I specifically talked to him or whether I  
4 delegated that to Mr. Hunter.

5 Q. During the time that Mr. Peters was in your  
6 office working for you, did you become social friends  
7 with him?

8 A. We actually both started as public defenders  
9 and then became prosecutors, and we had socialized  
10 occasionally over the years.

11 Q. And then I'm assuming after he left the office,  
12 probably you had no more social interaction with him.

13 A. That's correct. He moved to Idaho.

14 Q. Tell me about your understanding of -- let me  
15 ask you this. When did you first become aware that  
16 Sergeant Davidson and Shirley Spencer had had a personal  
17 relationship?

18 A. I don't know that they did have a personal  
19 relationship. I have no independent knowledge of that.  
20 But when did I first hear that they may have had a  
21 relationship, is that your question?

22 Q. Yes. Right.

23 A. Well, it was way after the plea and sentencing.  
24 That's all I can tell you.

25 Q. When you learned of that fact, regardless of

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1 Q. And would you agree that he was in charge of  
2 the Ray Spencer prosecution through sentencing of Ray  
3 Spencer?

4 A. Yes.

5 Q. Now, there's the original or there's the  
6 February 28th information and then there's an affidavit  
7 of Mr. Peters that's attached at Bates stamp 422.

8 A. Yes, I have that.

9 Q. Have you reviewed that affidavit recently?

10 A. No, I have not.

11 Q. Tell me, what was your understanding of the  
12 subsequent charges that were filed against Mr. Spencer.  
13 What were the allegations, the new allegations?

14 A. Well, my recollection is that Mr. Spencer had  
15 been released from jail after the original allegations  
16 against Katie and was either staying or living in a  
17 motel, Salmon Creek Motel, and saw -- was allowed access  
18 to the other two children, Big Matt and Little Matt, and  
19 additional allegations of sex abuse occurred in the  
20 motel which occurred after his release from jail, which  
21 precipitated the filing of the amended information.  
22 That's my recollection.

23 Q. Okay. And again, do you recall what evidence  
24 you reviewed or gathered before this second information  
25 was filed? I'm assuming you looked at police reports

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1 again, right?

2 A. Well, at this point, I may or may not have. It  
3 may have already been assigned to Mr. Peters, and he may  
4 have independently reviewed it and just told me what had  
5 occurred.

6 Q. And this time, there's nothing sent out, like  
7 to Rebecca Roe, I'm assuming, because Mr. Peters had  
8 been discharged from the Vancouver Police Department.

9 MR. FREIMUND: I object to the form. I think  
10 you misstated, Ms. Zellner.

11 MS. ZELLNER: I'm sorry. I said Peters.

12 BY MS. ZELLNER:

13 Q. By the time we get to February, has the  
14 potential problem with the Vancouver Police Department  
15 resolved itself because Mr. Spencer was discharged?

16 A. My recollection is that we ended up taking the  
17 case back because -- partially because of that factor,  
18 yes.

19 Q. And then you're describing that with the second  
20 information that's filed in February, that you may have  
21 had less direct involvement in looking at the underlying  
22 evidence. Is that fair, is that what you remember?

23 A. I remember being provided with information  
24 regarding his re-arrest and the fact that there were two  
25 additional victims and at that point becoming, I

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1 wouldn't say relieved, but more happy with my original  
2 filing decision because the case obviously became a lot  
3 stronger.

4 Q. Because you had these other alleged victims  
5 that helped to corroborate Katie Spencer's allegations,  
6 right?

7 A. Yes, correct.

8 Q. Okay. And, again, would you have --

9 A. If I could finish my answer, then.

10 Q. Oh, of course.

11 A. Not only did they corroborate or give  
12 credibility to Katie's allegations but provided new  
13 allegations as to sexual abuse that occurred on both of  
14 them separately as victims. So we now had three  
15 victims, not just two boys corroborating one victim, we  
16 had three separate victims.

17 Q. And so would it be a fair statement to say that  
18 you relied upon Mr. Peters in making your decision to  
19 file this second information with the new charges?

20 A. Well, I didn't file the amended information.  
21 But it's fair to say that Mr. Peters filed the  
22 information, the amended information, adding in the new  
23 victims, based on the information he received in the  
24 police reports, correct.

25 Q. And he kept you apprised of the developments,

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1 right, and you approved him filing the amended  
2 information?

3 A. Well, I don't know if I specifically approved  
4 it. It was kind of a no-brainer at that point. In  
5 other words, he didn't come to me and say we have two  
6 additional victims here. Do you think I should file an  
7 amended information? At that point, it would have been  
8 we have two new victims. I'm filing an amended  
9 information. There would have been no need for a  
10 discussion on it.

11 Q. Is that your recollection of how the events  
12 developed leading up to Mr. Peters filing this Second  
13 Amended Information?

14 A. Pretty much, yes.

15 Q. If we look at Exhibit 4, the first two pages,  
16 it's a document from Leland Davis, the chief of the  
17 Vancouver Police Department. Is your understanding that  
18 after the first charges were filed on January 3rd, that  
19 on January 8th that Mr. Spencer was terminated as a  
20 member of the Vancouver Police Department? Is that  
21 document consistent with your recollection of when he  
22 was terminated?

23 MR. VELJACIC: I'll object to the form as  
24 compound.

25 But go ahead and answer.

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1 THE WITNESS: I don't have any reason to  
2 dispute the dates, no.

3 BY MS. ZELLNER:

4 Q. And then if we look at what we've marked as  
5 Plaintiffs' Exhibit 9, that's a letter, January 9th,  
6 1985, and ask you if you can identify that as a document  
7 that you prepared.

8 A. Yes.

9 Q. I'm sorry. That's actually Exhibit 6 -- if we  
10 go up to what we've got labeled as Exhibit 7, it's a  
11 letter to Becky Roe from you and it's dated January 9th,  
12 1985. Is that a letter that you authored?

13 A. Yes.

14 Q. And that letter to Becky Roe indicates that the  
15 case is presently set for trial on February 27th and  
16 28th, 1985, before the Honorable Thomas L. Lodge; is  
17 that correct?

18 A. Yes.

19 Q. And what was your purpose in sending that  
20 letter to Becky Roe?

21 A. Well, the first sentence says that I was  
22 sending it to provide her with copies of the police  
23 reports, the information, other relevant documents, and  
24 then to thank her for taking the case.

25 Q. And what was going on at that point? It says:

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1 We appreciate your office accepting the responsibility  
2 for acting as Special Deputy Prosecuting Attorney in  
3 this matter due to the conflict we feel exists in our  
4 office.

5 What was the purpose of what you were doing at  
6 that point?

7 A. Again, these are questions, why did we ask them  
8 to handle the prosecution?

9 Q. Right. Because we know that Mr. Spencer has  
10 already been terminated from the Vancouver Police  
11 Department.

12 MR. FREIMUND: Object to the form. That  
13 mischaracterizes.

14 MR. VELJACIC: Same objection.

15 THE WITNESS: I think I can answer the  
16 question. If you look at Exhibit No. 5 --

17 BY MS. ZELLNER:

18 Q. Yes.

19 A. -- Exhibit No. 4 says that Mr. Spencer was  
20 terminated on January 8th. That was sent out to his --  
21 the Vancouver Police Department.

22 On January 9th, I sent a letter to the police  
23 chief saying that I was asking a special prosecutor to  
24 handle the case, apparently unaware of the fact that he  
25 had already been terminated.

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1 Q. If we look at Exhibit No. 8, that's a letter  
2 dated May 9th, 1985, to Barb Linde, and appears to be  
3 authored by James Peters, but it was cc'd to Becky Roe  
4 and to you.

5 Do you recognize this letter?

6 A. Just in the capacity that you've referenced it.  
7 It appears to be a letter sent by Mr. Peters that I got  
8 a copy of, yes.

9 Q. In the second full paragraph, it says: Since  
10 the charges flowing from the newly discovered evidence  
11 were filed within a couple weeks of the scheduled April  
12 15th trial date, the defense attorney was unable to  
13 prepare his case for that date. In addition, he was  
14 still working with a psychologist and a psychiatrist  
15 endeavoring to get Mr. Spencer to plead guilty.

16 Do you see that entry?

17 A. Yes.

18 Q. Do you know if your office, particularly Mr.  
19 Peters, made any direct contact with Ray Spencer's  
20 psychologist or psychiatrist prior to his guilty plea?

21 A. No, I have no knowledge of that.

22 Q. And would you agree that unless Mr. Spencer  
23 signed a release, that that would violate a  
24 patient/physician confidentiality?

25 MR. FREIMUND: Object to the form.



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1 You may answer.

2 THE WITNESS: Assuming that he was talking  
3 about confidential communications, yes.

4 BY MS. ZELLNER:

5 Q. One question I should have asked previously,  
6 when your office sent the file to Rebecca Roe, did you  
7 obtain a release of information from Katie Spencer's  
8 mother, DeAnne Spencer?

9 A. You mean a release of information, meaning that  
10 is it okay with you if we send the case up to King  
11 County?

12 Q. Correct.

13 A. No, that would not normally be something that  
14 would be done.

15 Q. So with a child sex abuse case, a file could be  
16 sent from one prosecutor to another without getting a  
17 release of information from a parent of the child?

18 A. Yes.

19 Q. Let's look at Exhibit 10. When did you first  
20 learn that there had been medical exams done of Kathryn  
21 Spencer and Matthew Hansen? Was it later in the time,  
22 like, was it in the '90s?

23 A. It would have been after July 1, 1992.

24 Q. And how were you informed that there had been  
25 medical exams done?

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1 A. I don't recall.

2 Q. It appears from this letter that you had your  
3 files searched and there were no medical records in the  
4 prosecution files. Would that be correct?

5 A. Yes.

6 Q. And did you ever inquire, after January 3rd or  
7 even before, as to whether medical exams had been  
8 performed on the children?

9 A. I'm sorry. Did you reference January 3rd?

10 Q. Yes.

11 A. What year are you talking about?

12 Q. I'm talking about way back in 1985 when you  
13 first bring the charges against Mr. Spencer. Did you  
14 inquire of the sheriff's department or did anyone ever  
15 inform you that they were considering doing medical  
16 exams or not?

17 A. Not that I recall.

18 Q. And, again, I'm assuming that if you had had  
19 those medical exams in the prosecutor's file, of course,  
20 those would have been turned over, right, during  
21 discovery?

22 A. Yes.

23 Q. When Mr. Spencer was seeking a pardon from the  
24 governor -- if we go to Exhibit 11 in that packet, if we  
25 go to the third letter, it's dated February 12th, 2007,

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1 MS. ZELLNER: I don't have any further  
2 questions.

3 MR. FREIMUND: I have no questions.

4 MR. BOGDANOVICH: I do have a couple.

5

6 EXAMINATION

7 BY MR. BOGDANOVICH:

8 Q. Mr. Curtis, this is Guy Bogdanovich. I'm the  
9 attorney for defendant Sharon Krause.

10 Had you ever received any complaints from  
11 either defendants or criminal defense attorneys  
12 regarding Detective Krause's truthfulness in conducting  
13 investigations or writing reports?

14 A. No.

15 MR. BOGDANOVICH: That's all I have.

16 MS. FETTERLY: Before I get started, I had the  
17 reporter mark some of the documents that I had sent. I  
18 didn't have her mark all of them because many of them  
19 are duplicative to plaintiffs' counsel's documents.

20 I had her mark as Exhibit 26, the copy I sent  
21 of the information that was dated January 2nd, 1985, and  
22 filed the next day, January 3rd. So that's 26.

23 And I had her mark as 27, it's a photocopy of  
24 handwritten notes on appears to be a notepad. The top  
25 says Defendant Clyde Ray Spencer and then it says Count

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1 EXAMINATION

2 BY MS. FETTERLY:

3 Q. Mr. Curtis, I'm handing you what's been marked  
4 as Exhibit 26, and can you identify that as the  
5 information that you signed on January 2nd, 1985, in the  
6 Spencer case?

7 A. It's dated January 2nd. It's filed January  
8 3rd, so I signed it either on the 2nd or the 3rd.

9 Q. Comparing a copy of the same document that was  
10 marked and discussed earlier in your deposition as  
11 Exhibit 3, but am I correct that the difference between  
12 the two documents is Exhibit 3 appears to have a  
13 conformed signature for you, whereas Exhibit 26 has an  
14 actual signature?

15 A. That's correct.

16 Q. And is the signature on Exhibit 26 your actual  
17 signature?

18 A. It is.

19 Q. There was much discussion earlier about whether  
20 or not you had reviewed Exhibit 1, which is Rebecca  
21 Roe's report dated November 27, 1984. Do you recall  
22 that line of questioning, initial questioning?

23 A. Yes.

24 Q. And then there was some discussion of exhibits,  
25 particularly Exhibit 6 and Exhibit 7, and am I correct

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1 that Exhibit 6 and 7 is correspondence between you and  
2 Norm Malang, the King County prosecutor, that is dated  
3 -- is that January 5th, 1985?

4 A. I can't tell if that's January 5th or -- looks  
5 almost like a 9th.

6 Q. Okay. 9th. And then there's a letter to  
7 Rebecca Roe dated January 9, 1985.

8 A. Right.

9 Q. These documents are basically thanking Mr.  
10 Malang for providing a special prosecutor, namely Ms.  
11 Roe in this case, correct?

12 A. Yes.

13 Q. In reviewing these documents, and I think there  
14 were some other testimony, that Mr. Peters expressed  
15 some reluctance to proceed or saw some problems about  
16 proceeding to file charges in January of 1985. Does  
17 that refresh your recollection as to whether or not you  
18 likely reviewed Exhibit 1, Ms. Roe's report, prior to  
19 filing the initial charges?

20 A. Yes. We specifically asked Ms. Roe to review  
21 the case for us. And I would find it hard to believe  
22 that we would ask her to review a case and then not  
23 review her -- review this letter which incorporates her  
24 opinions and rationale. It wouldn't make any sense to  
25 me that I wouldn't have reviewed the letter. But I

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1 don't have any independent recollection 26 years later  
2 of having done so.

3 Q. But do you believe in reviewing the subsequent  
4 documents that it's likely you did?

5 A. Yes.

6 Q. Now, handing you what's been marked as Exhibit  
7 27, can you identify that, please?

8 A. This is a document that I prepared. In the old  
9 days, we would have yellow pads that we would use to  
10 write out contents of informations. I put at the top D,  
11 which is defendant, Clyde Ray Spencer, and then Count 1,  
12 Count 2, Stat Rape 1, and Indecent Liberties, Count 2.

13 I asked my secretary to provide or to compare  
14 the information alleging the dates of -- on one or more  
15 occasion between July 18, 1984, and August 26th, 1984,  
16 and see if CCSofW - which is County of Clark, State of  
17 Washington - and then I listed the victim as Kathryn E.  
18 Spencer who was five years of age at the time. Count  
19 No. 2, Indecent Liberties, I cited the pertinent part of  
20 the statute. There's a 1(a) and 1(b), which was being  
21 charged under 1(b), same dates.

22 And at the bottom appears shorthand from my  
23 long-time secretary, Carol Axford, which I don't read  
24 shorthand so I don't know what it says, other than she  
25 was -- I probably asked her to docket it for the next

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1 day or that day, which is the 9 -- I can't read the rest  
2 of it.

3 Q. Would that have been a document, meaning  
4 Exhibit 27, which was basically your rough draft and  
5 instructions to staff that went into preparing Exhibit  
6 26, which was the initial information?

7 A. Yes.

8 Q. And am I correct that Exhibit 27, other than  
9 the shorthand at the bottom, was all in your  
10 handwriting?

11 A. Yes.

12 Q. Why did you make the decision to file the  
13 initial charges against Ray Spencer?

14 A. Well, I knew that it was a tough case. At the  
15 time I knew that Mr. Peters had some reservations about  
16 filing it, even after his interview with Katie Spencer. ✓  
17 Obviously, Becky Roe had reservations, as well.

18 But as I recall, the thing that kept coming  
19 back to me was the part of her letter, Rebecca Roe's  
20 letter to us on page 3 where she says here: There are  
21 several problems. Although I believe child was clearly  
22 abused and probably by the defendant, the case is  
23 unwinnable even assuming you can get the child to  
24 testify -- or to talk.

25 I recall that I did not come to the decision to

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1 file this case lightly. I felt like there were some  
2 problems with the case, but it was my policy as the  
3 elected prosecutor to take an aggressive stand in my  
4 county towards child abusers. And the fact that Becky  
5 Roe concluded the child was abused, allegations were  
6 against this specific defendant, I decided that that's  
7 what juries are for, to make that determination, not for  
8 me as a prosecutor, to go back to a four-year-old girl  
9 and say, you know, we believe you were molested as you  
10 say you were. We believe you, but we're not going to  
11 believe you of the point of giving you your day in  
12 court.

13 That's the posture I had on many of these sex  
14 abuse cases in Clark County over the years. We felt  
15 that if we could win or get convictions on these types  
16 of cases even 50 percent of the time, we were doing a  
17 service to the criminal justice system and our  
18 community. We did get convictions many times on these  
19 tough cases; sometimes we didn't.

20 But I was not going to let my belief that this  
21 defendant was guilty and that this victim had been  
22 abused by this defendant to be overridden by a policy of  
23 not at least giving it our best shot in a court of law.

24 Q. Did Jim Peters pressure you to file the initial  
25 information in January?